SINGLE BENCH (1)

C.S 1001

(5)

समक्ष छत्तीसगढ़ उच्च न्यायालय बिलासपुर (छ0ग0)

याचिका कमांक (C) 1066 /2006 7

याचिकाकर्ता ..... डी0पी0 शराफ,
पिता खटानंद शराफ, उम्र 48 वर्ष,
वर्तमान निवासी क्वा0 नं0 ई–22,
15 ब्लाक एस0ई0सी0एल0 कालोनी
कोरबा (छ0ग0)

विरूद्व

उत्तरवादीगण ..... (1) बी0 कृष्णमूर्ति पिता स्व0 गुंडाराव,
उम्र 38 वर्ष,
टेरोटरी मैनेजर भिलाई डीपो
भारत पेट्रोलियम कार्पोरेशन लिमि0
बिजली नगर भिलाई –3,
जिला दुर्ग (छ0ग0)

P.R. No. 6210106
Presented by Shri S.K. Sahu
dated 8-11-06

(2) एस0 करगांवकर पिता श्री गनपत
राव, उम्र 36 वर्ष,

टेरोटरी मैनेजर भिलाई डीपो
भारत पेट्रोलियम कार्पोरेशन लिमि0
बिजली नगर भिलाई –3,
जिला दुर्ग (छ0ग0)

याचिका संविधान के अनुच्छेद 14 एवं 226 के अंतर्गत

(20)

HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P. (C) No. 1066 of 2007

Petitioner D. P. Saraf

Versus

Respondents B. Krishnamurti & another

SB: Hon'ble Mr. Justice Satish K. Agnihotri, J

Petitioner in person.

ORDER

(Passed on this 26th day of February, 2007)

The following order of the Court is passed by Satish K. Agnihotri, J.

1. By this petition, filed under Article 226 of the Constitution of India, the petitioner does not challenge the validity of any particular order/judgment but seeks following reliefs:-

"7.1 घोषणा किया जावे कि उत्तरवादीगण को याचिकाकर्ता के विरूद्व लाया गया विविध वाद, विविध अपील एवं द्वितीय अपील उत्तरवादीगण द्वारा बिना किसी अधिकारिता के फाल्स ढंग से लाया गया था ।

7.2 घोषणा किया जावे कि याचिकाकर्ता को डिक्रीयों के निष्पादन का अधिकार है ।

7.3 घोषणा किया जावे कि सन् 1997 से कब्जा प्राप्त करने की अवधि तक याचिकाकर्ता के भूमि पर पेट्रोलिगम पदार्थ के विक्रय के आधार पर भारत पेट्रोलियम द्वारा स्वीकृत कमीशन आदि को याचिकाकर्ता प्राप्त करने का अधिकारी है ।

7.4 यह कि उत्तरवादीगण से पूछा जावे कि न्यायालय में जमा किये गये रकम हैं कहां से आया पूर्ण विवरण दे उसका स्त्रोत वहां से तथा कं0 द्वारा भुगतान कब किया गया पूर्ण विवरण दें । तथा 5000/– रू0 बैंक ड्राफ्ट किसके द्वारा बनवाया गया था इस संबंध में पूर्ण विवरण दें ।"

2. I have heard the petitioner in person and perused the pleadings and documents appended to the petition.

3. On hearing, it appears that the petitioner is questioning the finding of this Court recorded in para 27 and 30 of the order dated 11.5.2005 passed in M.A.No. 855/2002, which reads as under :-

(31)

"27. "From perusal of the aforesaid provisions, not only the power of attorney holder but also the principal officer of the corporation was permitted to verify and sign the pleading. B. Krishna Murthy, who signed the application, was the Territory Manager of the office established at Bhilai by the defendant M/s Bharat Petroleum Corporation Limited, and this fact has not been disputed by the plaintiffs, therefore, B. Krishna Murthy, had power to sign the application even without power of attorney, and at the most, that was required by the corporation to rectify the said action."

"30. From the aforesaid discussions, it appears that the application under Order XLI Rules 19 and 21 read with Section 151 of the Code of Civil Procedure has been signed by B. Krishna Murthy, a Principal Officer of M/s Bharat Petroleum Corporation Limited and duly authorised under power of attorney to act on behalf of it, therefore, the application was filed by a competent person."

4. The entire case of the petitioner is that the petitioner has received certain information through E. Mail that there is no person by name Shri B. Krishna Murthy, holding the charge of the Principal Officer.

5. The facts, in nutshell, are that a civil suit was filed by the petitioner for possession of the land bearing Khasra No. 748/2, area 0.76 acres, situated at Village- Tifra, District- Bilaspur and for recovery of arrears of rent of Rs. 2,175/- and damages against the respondent - Corporation. That civil Suit No. 69-A/1998 was partly allowed by the Civil Judge Class-I, Bilaspur vide judgment and decree dated 1.12.1998 for payment of arrears of rent.

6. Thereafter, the petitioner with two others preferred a Civil Appeal No. 7-A/1999, which was allowed fully by the District Judge, Bilaspur vide ex parte judgment and decree dated 21.9.1999.

7. The Corporation after having come to know about passing of the ex parte judgment and decree dated 21.9.1999, filed an application under Order XLI Rules 19 and 21 read with Section 151 of the Code of Civil Procedure through its power of attorney holder Shri B. Krishna Murthy, for setting aside the ex parte decree dated 21.9.1999. That application was rejected vide order dated 29.10.2002 passed in Misc. Civil Case No. 19/2002 .

8. Being aggrieved, the Corporation preferred M.A.No. 855/2202 before this High Court challenging the order dated 29.10.2002 passed in Misc. Civil Case No. 19/2002. This Court vide order dated 11th May, 2005 passed in M.A.No. 855/2002 allowed the appeal with cost, setting aside the order dated 29.10.2002, with the direction to the first appellate Court to rehear the Civil Appeal No. 7-A/1999 and after affording proper opportunities to both the parties, decide the same afresh.

9. The District Judge, Bilaspur, on the basis of the clear finding recorded by this Court in the order dated 11.5.2005, allowed the appeal vide judgment and decree dated 31.12.2005 passed in Civil Appeal No. 07-A/99.

10. It appears that a Second Appeal No. 16/2006 against the judgment and decree dated 31.12.2005 passed in Civil Appeal No. 07-A/99 by the District Judge, Bilaspur, is pending consideration in this Court.

11. In this petition, in fact, the petitioner has challenged the finding of this Court recorded in M.A.No. 855/2002 vide order dated 11th May, 2005. On that basis learned District Judge considered the appeal afresh on merit and passed the judgment and decree dated 31.12.2005 and second appeal against the said order is pending consideration before this Court.

12. This Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India cannot entertain a petition questioning the findings recorded by the coordinate Bench of this Court in Miscellaneous Appeal. Even otherwise, this petition is vague, frivolous and lacks material facts. Thus, the petition is devoid of merit.

13. As a result, for the reasons mentioned hereinabove, this petition is dismissed, summarily.

Consequently, M(W)P No. 691/2007 stands dismissed.

Sd/-
Satish K. Agnihotri
Judge

Thakur